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SERVICE DATE – NOVEMBER 13, 2017

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36152

OHIO RIVER PARTNERS SHAREHOLDERS LLC—EXEMPTION FOR INTRA-
CORPORATE FAMILY TRANSACTION—OHIO RIVER PARTNERS LLC

Docket No. FD 35984

OHIO RIVER PARTNERS LLC—ACQUISITION AND OPERATION EXEMPTION—
HANNIBAL DEVELOPMENT, LLC

Decided: November 9, 2017

In 2016, the Board authorized Ohio River Partners LLC (ORP) to acquire and operate a 12.2-mile rail line between milepost 60.5 at or near Powhatan Point, Ohio, and milepost 72.2 at or near Hannibal, Ohio (the Omal Line). Ohio River Partners LLC—Acquis. & Operation Exemption—Hannibal Development LLC (Ohio River Partners), FD 35984 (STB served Apr. 1, 2016).¹ On October 16, 2017, Ohio River Partners Shareholders LLC (ORPS) and ORP (collectively, the Parties) jointly filed, in Docket No. 36152, a verified notice of exemption under 49 C.F.R. § 1180.2(d)(3) for an intra-corporate family transaction in which ORP would be merged with and into its parent, ORPS.² According to the Parties, the purpose of this transaction is to vest both fee title to the Omal Line and the regulatory authority (and common carrier obligation) to operate the Omal Line in a single entity (ORPS). Notice of the intra-corporate family exemption was served and published in the Federal Register on November 1, 2017 (82 Fed. Reg. 50,728), and the exemption is scheduled to become effective on November 15, 2017.

On November 2, 2017, Ohio Terminal Railroad Company (OTRC) filed a petition seeking partial revocation of the intra-corporate family exemption. OTRC states that it does not oppose the exemption provided that the Board makes clear that ORPS, as the successor to ORP,

¹ In a related proceeding, Fortress Investment Group LLC—Continuance in Control Exemption—Ohio River Partners LLC, FD 35985 (STB served Dec. 31, 2015), Fortress Investment Group LLC (Fortress) was authorized to continue in control of ORP and two other rail carriers currently controlled by other companies managed by affiliates of Fortress following consummation of the transaction authorized in Ohio River Partners.

² ORPS and ORP are Delaware limited liability companies. ORPS owns 100% of the member interests of ORP.

will have only the conditional operating authority that ORP obtained in Ohio River Partners³ and that ORPS will be substituted for ORP in that proceeding for all purposes.⁴ Moreover, OTRC argues that the Board should make clear that, upon consummation of the intra-corporate family transaction, ORPS will be the only member of the Fortress corporate family that has any authorization to operate on the Omal Line, and that any transfer of that operating authority would need to be the subject of a separate proceeding. OTRC claims that the conditions are needed because it appears that the ORPS (and the Fortress corporate family) may be attempting to use the intra-corporate family transaction to avoid the conditions established in Ohio River Partners.⁵ To date, the Parties have not responded to OTRC's filing.

To provide sufficient time for the Board to fully consider the arguments presented, this proceeding will be put into abeyance, and the effective date of the exemption will be postponed, until further order of the Board.

It is ordered:

1. The effective date of the exemption is postponed until further order of the Board.
2. The Parties' reply to OTRC's petition is due by November 22, 2017.
3. This decision is effective on its date of service.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

³ OTRC notes that there are open questions regarding the scope of these conditions arising from its petition filed on September 5, 2017 in Ohio River Partners. (Pet. 5-6, Nov. 2, 2016; see also OTRC Pet. 2-4, Sept. 5, 2017, Ohio River Partners; ORP Reply, Sept. 22, 2017, Ohio River Partners.)

⁴ OTRC asks the Board to clarify that its prior orders in Ohio River Partners would be applicable and binding on ORPS effective with any merger of ORP with and into ORPS and that ORPS is bound by the representations made by ORP in Ohio River Partners. (Pet. 5, Nov. 2, 2016.)

⁵ OTRC asserts that one of the entities controlled by Fortress, Central Maine & Quebec Railway, recently issued an "adoption notice" . . . to take over the Omal Line stations and all of OTRC's tariffs as of October 1, 2017." (Pet. 6, Nov. 2, 2016.) OTRC states that it was able to reverse these actions, but believes the actions indicate that the Fortress family railroads intend to operate on the Omal Line without waiting to comply with conditions established in Ohio River Partners.